IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2845 OF 2005.

Pune Cantonment Board,
Pune. ..Petitioner

versus

Shri Gokuldas Asaram Rathod
& Others ..Respondents

Shri V.G. Mujumdar for the petitioner
Shri S.J.Rairkar for the Respondents

Coram : S.R.Sathe, J.
Dated : 30th Jan, 2006

P.C.

1. Heard both the learned Advoctes.

2. Both of them submitted that the companion matter has been disposed of by the Court (Coram S.C.Dharmadhikari, J. dated 20.01.2006). The facts of the said case and the facts of the case in hand are identical and as such the same order be passed in the present petition.

3. Adopting the reasons mentioned in writ petition No.2846 of 2005 it is very clear that the order passed by the lower appellate Court dated 17th February, 2005 in Misc. Civil Appeal, prima facie,

does not take into account the nature of the right which has been conferred upon respondents. It is needless to say that M.G.Road, Pune area is so busy road and if it is used by motorist throughout the day the the footpath which is meant for use of pedesterians is occupied by the hawkers would pose several hazards and risks to the residents so also the pedesterians. In these circumstances, the temporary injunction granted in favour of the respondents is to be vacated.

4. In all fairness it must be observed that Mr. Rairkar being unable to take instructions and the documents placed on record not indicating, according to him, permanent arrangement or a temporary one, interest of justice would be subserved if the regular civil suit is kept pending and liberty is granted to the original plaintiffs to apply to trial court for appropriate reliefs in case, they are aggrieved by any further steps that may be taken by Pune Cantonment Board. Leaving all such contentions open, present petition is allowed and temporary injunction granted stands vacated forthwith.

5. Petition disposed of in above terms.

(S.R.Sathe, J.)